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THE LEGAL STATUS

OF WOMEN

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Topics recommended for investigation  
and study, to be followed by what-  
ever action is found necessary.

Status of Women Committee, 1956

American Association of University Women

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September 7, 1956

Dear State Chairman of the  
Status of Women Committee:

The Status of Women Committee is as much concerned with the legal status of women as with their political, educational, economic and social status. For this reason our program encompasses a review of the status of women under the law throughout each of the forty-eight states of America, its territories and possessions. When summarized and presented from the layman's point of view this will comprise a new and valuable resource.

In this field of legal status many of the discriminations against women have been removed by legislation. In some states, however, inequities still exist and it is in the correction of these that we now seek to enlist your support as the leader in your state, so that the last vestige of unfairness may be erased, and, legally at least, the nation's escutcheon will be clear.

On the attached sheets are outlined the topics which are recommended for investigation, as they comprise areas where traces of inequality remain. A knowledge of the present legal position of women in your state can be obtained by consulting your state laws or statutes or by reference to the separate reports on this subject published by the Women's Bureau of the United States Department of Labor. If you are fortunate enough to have among your members one versed in the law she could be of invaluable assistance to you in this study. It is noteworthy that except in the area of citizenship rights (jury service and eligibility for public office) it is the married woman whose position is endangered. Single women's rights are practically the same as single men's, with this exception.

Women's legal status, of course, means their position under the law, and therefore this study carries over into the related field of women's economic status when we study the laws designed to protect women workers, namely, minimum wage and maximum hour laws, and equal pay for equal work. The Status of Women Notes appearing in the January 1953 issue of the General Director's Letter discuss at length the Equal Rights Amendment and its relation to these laws designed to safeguard women. Therein it is stated:

"The Committee on the Status of Women believes that the great social, technological, and economic changes that have affected working conditions since the first 'protective' labor laws were enacted and the vastly increased extent to which women are now gainfully employed as compared with fifty years ago require a reappraisal of the Association's traditional attitude toward this type of legislation especially as it relates to the Association's stated principle of working continuously for the removal of obstacles confronting women because of their sex.

"The committee is convinced that such measures as are necessary to protect the health, welfare, and safety of workers are more appropriately provided on the basis of the nature of the particular job rather than

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the sex of the person performing the job, and that preferences extended to workers who are expectant mothers are justifiable not on the sole basis that they are women but that they constitute a special class of workers entitled to consideration in the same manner that veterans, as a class, are afforded employment preferences."

These views, propounded by a former Status of Women Committee, do not necessarily represent the position of the present committee, but they should be considered in any examination of legislation designed to safeguard women workers. Such laws should be carefully scrutinized and reevaluated. In this connection it is noteworthy that in California the American Association of Bank Women has been urging the exemption from the maximum limit of 48 hours of executive, professional and administrative personnel. There are some states whose laws already exempt women holding such positions. Some flexibility in the law, therefore, seems wise, but adequate protection for women workers remains of prime importance.

When your study is complete, will you assist us by sending in your findings on the legal status of women in your state in all its varied aspects? With this information in hand the Status of Women Committee can then draw up a summary which will be made available to our branches and State Divisions.

Yours most sincerely,

*Frances T. Freeman Jalet*  
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Associate,  
Status of Women Committee

NOTE

No study of women's legal status is complete unless it includes consideration of the position of women throughout the world. All the varied aspects of women's status in public and private law in the United States are duplicated in the other nations, but pose different problems. A study of the status of women in international law is also related to women's status abroad. The development of materials in this extensive field is a future task of the Status of Women Committee. Meanwhile, review of reports of the Inter-American Commission of Women<sup>1</sup> (which covers 21 states of the Western Hemisphere) and the Status of Women Commission<sup>2</sup> of the United Nations (global in scope) will provide interesting contrasts.

<sup>1</sup>Obtainable from:

Inter-American Commission of Women  
Pan American Union  
Washington 6, D. C.

<sup>2</sup>Obtainable from:

United Nations  
New York City, N. Y.

## THE LEGAL STATUS OF WOMEN

## Topics

Two distinct types of law govern our lives. The one is the unwritten or common law which has been handed down from colonial times; the other is the written law as set forth in statutes. In the absence of statute, the common law is controlling. Therefore, a definition of it seems in order. The common law (non-statutory law) comprises those principles of unwritten law derived from the law of England, and to a much lesser extent from the civil law of France and Spain (itself founded on the Roman law) which have been developed and adapted over the years since the first colonists settled on our shores, and which have been transmitted through common usage and custom, and are embodied in judicial decisions which serve as precedents and guides to the legal profession - judges and lawyers alike.

## I. Women's Status under

- A. Laws Relating to Citizen's Rights
- B. Family Law
- C. The Law of Property
- D. The Law of Contract

### A. Laws Relating to Citizen's Rights

Domicile<sup>1</sup> of married women

Public Office)  
Jury Service ) Eligibility of Women

## B. Family Law

## Marriage

- Age of consent to (for men and women)
- Health certificate requisite prior to issuance of license
- Waiting period
- Prohibited marriages
- Validity of common law marriage<sup>2</sup>
- Interstate cooperation in marriage law enforcement

<sup>1</sup>Domicile: the place of legal residence.

<sup>2</sup>Common law marriage: is one where a man and woman live together as man and wife, and are publicly so regarded, but no marriage ceremony has taken place. The law steps in and recognizes them as married in fact. It is also spoken of as an "informal marriage" since no formalities occur. Twenty states, the District of Columbia and the territory of Alaska recognize common law marriage. The Virgin Islands has no clear ruling or statute thereon.

## Dissolution of Marriage

Grounds for annulment (availability to men and women)  
Grounds for divorce (respective availability to spouses)  
Alimony and maintenance

## Parents and children

Minor children - parents respective rights concerning:

Services and earnings  
Guardianship  
Appointment of Testamentary Guardian<sup>3</sup>  
Inheritance from an intestate<sup>4</sup> child  
    a. legitimate child  
    b. child born out of wedlock (mother only has rights)

## Support of minor children

Responsibility of both parents for  
    Primary responsibility - father  
    Secondary responsibility - mother

Children born out of wedlock  
    Primary responsibility - mother  
    Secondary responsibility - father (usually after proof of  
        paternity through bastardy proceedings.)  
    Legitimation of children born out of wedlock

## C. Property Law

Exemption from seizure for debts  
Married woman's separate property  
    Control during marriage  
    Liability for husband's debts  
Property acquired after marriage through cooperative effort of  
    both spouses  
Separate earnings of married woman  
    Ownership  
    Control  
Procedure required for women to engage in a separate business  
Damages received for injuries by strangers to a married woman's:  
    Person  
    Property  
    Character  
Action to recover damages for willful or negligent injuries to  
    person or property of one spouse by another  
        (Respective rights of husband and wife)

<sup>3</sup>Testamentary Guardian: a person appointed by a parent, by will, to serve as guardian of the person or estate of his or her minor child.

<sup>4</sup>Intestate: one who dies leaving no will.

## Wills

- Who may make a will
- Invalidation of wills
  - By marriage
  - By birth of issue
- Requirements for valid will
- Disinheritance of husband or wife by will of deceased spouse

## Estates

- Disposition of separate property by will
  - Extent of married woman's right
- Estate of deceased husband or wife
  - Share of surviving spouse
  - Provision for surviving spouse during administration

## D. Contract Law

- Age of Majority
- Contractual power of minors
- Contractual power of married woman
- Liability of married women for family necessities

## TOPICS SUGGESTED FOR EARLY STUDY

I have singled out a few topics for prime consideration because in these inequities are the most pressing and are quite likely to linger on unless decisive action is taken to eliminate them.

### 1. Jury Service

In only four states are women ineligible to serve on juries (Alabama, Mississippi, South Carolina, and West Virginia\*). However, in many others women may be exempted from service simply upon request and merely because of their sex. This is not a sound basis for exclusion. Females should not take advantage of their sex to evade citizenship responsibilities. They must fully assume them and serve side by side with men. Some states set up special conditions applicable to women only whereby they may be excused from jury duty; namely, if needed at home to care for their children. This is aimed at protection of the family and, therefore, has some justification; but whenever possible it is hoped women will so arrange their home life that they may exercise this right which they have so long demanded.

\* Jury service referendum to be held November, 1956.

### 2. Divorce

In most states the grounds for divorce are equally available to both spouses. But it is common knowledge that the general divergence in state laws gives rise to blatant injustices. For example, in the State of New York but one ground of divorce is recognized: adultery. In adjoining Connecticut, however, seven grounds for divorce exist: adultery, fraudulent contract, willful desertion for 3 years with total neglect of duty, 7 years absence during all of which period the absent party has not been heard from; habitual intemperance; intolerable cruelty; sentence to imprisonment for life; plus incurable insanity. And in the far west, Nevada offers divorce with a minimum residence requirement of 6 weeks and on grounds as numerous as Connecticut's. A Uniform Divorce Law would go far to eliminate these irreconcilable confusions. It would preclude such incongruous situations as develop when a spouse legally divorced in one state is barred from remarriage in another which refuses to recognize the validity of the divorce decree of the first state; or when husbands or wives subjected to the same cruel treatment are permitted to sever the bonds of matrimony in one state, but must continue as husband and wife, under intolerable conditions in another.

### 3. Guardianship of Minor Children

In six states the father is preferred as guardian - the mother's rights should be equal to his. The states in which the father is preferred are: Georgia, Louisiana, New Mexico, North Carolina, Alabama, and Texas.



#### 4. Support of Minor Children and of Wives and Ex-Wives

The Uniform Reciprocal Enforcement of Support Laws have done much to prevent the avoidance by men of their family responsibilities. No longer can a wife, or mother and child, be left destitute by a profligate husband or father who has skipped out of the state to another jurisdiction. The long arm of the law can now reach him everywhere in the United States. Everywhere that is, EXCEPT in the District of Columbia. Our nation's capital should be brought into line (Washington Branch, please take note!). The support laws are applicable to any person legally responsible for the maintenance of a dependent, such as adult children for their parents.

#### 5. Property

In most every jurisdiction a married woman's separate earnings and property are her own; but either real or personal property acquired after marriage through cooperative effort of both spouses, and commingled, becomes the property of the husband. This works very real hardship in the case of severance of the relationship, resulting from death or separation. The furniture, the household equipment, ornaments, the family car, stocks and bonds, money in the bank - even the land on which the homestead rests, may be disposed of by the husband during the marriage relationship for he has full power of management and control. The wife is thus left with nothing. Legislation should be passed to safeguard her rights and make this control joint. In many states the wife is given a vested interest in the homestead or other real property and the husband may not convey it away without her consent; but in others he may make the conveyance either absolute or fettered by her vested interest. To protect her interest, the wife must bring legal action, which places her in a tenuous position and is no substitute for the right of joint management and control. A further inequity is that in case of death, even though entitled to her statutory share of her husband's estate (usually one-third) this may be less than is actually due her by virtue of the amount she has contributed to the acquisition of the property.

#### 6. Inheritance Laws

In many states where the husband dies without a will and there are no children, his mother and father, or brothers and sisters, are entitled to a share of the estate. This is true even though they may have been out of touch with the deceased and his wife for years, or may even have been hostile to them; and also despite the fact that in fact the husband's estate represented property acquired predominantly by the wife's efforts.

(The Women's Bureau of the Department of Labor has prepared Bulletins covering many aspects of women's legal status - a separate one for each state. They were first published in 1948 under the title "The Legal Status of Women" and each includes an Addendum which brings it up-to-date to January 1953. (Be sure to request the Addendum as well as the principal pamphlet.) In the case of a few states, where the supply has been exhausted Bulletins have been completely revised up to January 1, 1956. There is also available a summary of these pamphlets covering the whole United States. This has just been revised and will be obtainable by fall.)

## II. Women's Status Under Labor Law

### (Labor Standards)

1. Minimum wage
2. Equal Pay for Equal Work

(A special study kit is being prepared on this topic,  
so it is not fully developed herein)

3. Hours

Maximum  
Daily  
Weekly  
Day of rest  
Rest Periods  
Meal periods"  
Night periods  
Night work

4. Special  
Weight lifting  
Seating  
Occupational limitations  
Industrial work at home  
Childbirth  
(Employment before and after)

Special regulations for household workers  
Minimum wage  
Maximum hours

HISTORICAL BACKGROUND  
of  
LABOR LAWS DESIGNED TO SAFEGUARD WOMEN

Minimum Wage Legislation

Minimum Wage Laws have an interesting history. The first state to enact such a law was Massachusetts in 1912, and it set the pattern for all subsequent legislation of this type. The report of the 61st Congress, 2nd Session (December 8, 1909 to June 25, 1910) shocked the nation into demanding such legislation. It showed the unreasonably long hours and inadequate pay of women and children wage earners. A bare subsistence was eked out under the worst moral and physical conditions. Civic groups, women's organizations and an aroused citizenry demanded that women and minors no longer be exploited, and rallied to supply the organization they lacked.

The wage laws first established the concept of the living wage. These early laws were known as the "cost of living" laws. As opposed to the "fair value" laws which later developed.

Typical language of a "cost of living" law:

"Wages sufficient to maintain the worker in health and supply her with the necessary comforts and conditions of reasonable life."

"it shall be unlawful to employ women ..... for wages which are inadequate to supply the necessary cost of living and to maintain them in health."

Example of a "fair value" law:

sets forth the principle of "a fair return for services rendered."

Minimum Wage legislation at the national level was first enacted under the National Industrial Recovery Act in 1933 and again in 1938 through the Fair Labor Standards Act, which latter act applies to employees in industries engaged in or affecting interstate commerce. There is presently in Congress a bill designed to extend the coverage of this act to a wider range of workers.

Today a total of 33 jurisdictions - 29 states (Arizona, Arkansas, California, Colorado, Connecticut, Idaho, Illinois, Kansas, Kentucky, Louisiana, Maine, Massachusetts, Minnesota, Nevada, New Hampshire, New Jersey, New Mexico, New York, North Dakota, Ohio, Oklahoma, Oregon, Pennsylvania, Rhode Island, South Dakota, Utah, Washington, Wisconsin, and Wyoming), the District of Columbia and the three territories of Hawaii, Puerto Rico, and Alaska have minimum wage laws for women and

children. Eleven of these laws apply equally to both men and women.\* It is rewarding to see legislation originally designed to protect women workers, extending its benefits to men.

\*The 11 jurisdictions are: Connecticut, Idaho, Massachusetts, New Hampshire, New Mexico, New York, Rhode Island, Wyoming, Alaska, Hawaii, Puerto Rico.

There are two prevailing methods of establishing minimum wages. The one first used sets up wage boards which issue minimum wage orders in various industries or occupations. The second is known as the "statutory rate method" and has the advantage of establishing immediate widespread minimum wage protection but it is not flexible, nor is it so easily adjusted to economic change as wage orders. This is because a statute can be altered or superseded only by the body which enacted it - the Legislature; whereas it is a much more simple matter for a Wage Board to issue a new order. In many states both methods are used, which perhaps is the happiest solution, since they then serve to supplement each other.

### Equal Pay for Equal Work

The subject of equal pay for women for work equal to that of men is a field in which national as well as state legislation is needed, and being actively sought. It is an area of interest, too, of the International Labor Organization as it seeks to make adoption of this principle of simple justice a matter of worldwide concern.

Sixteen states\* and Alaska have enacted equal pay laws though some of these are inadequate and poorly enforced due to lack of funds. The preparation of study materials on this seemingly controversial and complex area of women's rights has been undertaken by the Status of Women Associate. Until such time as they are available, investigation can be begun in one's own state to determine what steps are needed to either implement the existing law, or secure enactment if none is in existence. For a succinct review of the problem involved consult:

EQUAL PAY PRIMER Some Basic Facts  
Women's Bureau Leaflet No. 20  
Women's Bureau, U. S. Department of Labor  
Washington 25, D. C.

\*The 16 states are: Arkansas, California, Colorado, Connecticut, Illinois, Maine, Massachusetts, Michigan, Montana, New Hampshire, New Jersey, New York, Oregon, Pennsylvania, Rhode Island, and Washington.

### Hours Laws

Maximum hours were the first standards to be adopted regulating women's employment, and again Massachusetts is in the lead, with the first enforceable law in 1879. Today only five states are without this protection for women workers. (They are: Alabama, Florida, Indiana, Iowa, and West Virginia.) Some states set the maximum number of hours for a day's work at 10, some at 9, but at least one-half of the states have established an 8 hour day and/or a 48 hour week, or less, for industrial workers.

Other regulation of hours relates to (1) a day of rest (6 day week); (2) 20 to 60 minutes for meal period; (3) rest periods - 10 minutes per half day; (4) a limit on night work; and (5) regulation of industrial work done at home.

Special regulations require the provision of seats for women workers (seating laws exist in all states except Illinois and Minnesota), guard against her lifting too heavy weights, and prohibit her working in certain occupations dangerous for her physical or moral well being (mining, coke ovens, liquor establishments, pool rooms, etc.). Only six states and Puerto Rico have laws prohibiting employment of women before and after childbirth.

#### Details to be checked

The trouble areas that should be of special concern in this field of women's economic status are briefly stated below:

1. Minimum Wage Laws: First determine whether or not your state has such a law. Next, be sure the law already existing, or, advocated for enactment:
  - a. protects workers in all industries within the State, whether engaged in intra or inter state commerce.
  - b. protects workers in hotels, restaurants, laundries, beauty parlors, amusement places, stores (both grocery and mercantile); for such workers are not covered by the Federal Fair Labor Standards Act.
  - c. sets rates at least as high as the new federal figure of \$1.00 an hour, which went into effect in mid-March of this year.(1956)
  - d. includes an overtime rate so that hours in excess of the specified number of hours per week are recompensed at an increased figure of time and one-half.
  - e. provides a dual method of establishing minimum wages: the setting of a statutory rate along with the creation of wage boards which will issue wage orders readily adjustable to economic change.
2. Hour Laws: First determine whether or not your state has such laws (only five states are totally without them: see page 8, supra). Next, be sure the law already existing, or advocated for enactment:
  - a. provides one day a week of rest (only about half the state laws now do).
  - b. assures the worker of a long enough meal period (many states allow only 20 minutes; it is felt the minimum allowance should be 30 minutes).

c. limits the work week to 48 hours (many go up to 60 hours).

d. permits rest periods during the day.

Caution: There are occasions when limiting the hours of work of women and not of men may work hardship and thus become discriminatory. Some flexibility in provisions of the law may thus be advisable.

3. Industrial Work at Home: This type of labor should be strictly regulated as it may endanger the health and welfare of the family and enable employers to circumvent the law by paying lower wages and thus undercutting factory wage scales.

The following publications of the Women's Bureau constitute a valuable resource:

State Minimum-Wage Laws and Orders (1953)

Bulletin #247

Supplement to Bulletin #247, July 1, 1954

Supplement 2 to Bulletin #247, May 1, 1955

State Hour Laws for Women (1953)

Bulletin #250

Summary of State Labor Laws for Women (1954)

Bulletin #255

State Minimum-Wage Laws (Revised July 1, 1955)

Leaflet #4

Minimum Wage and the Woman Worker (1955)

Leaflet #24

Recommended Standards for Employment of Women (1950)

Digest of 1955 State Legislation of Special Interest to Women Workers (1956)

1956 Handbook on Women Workers

(This will be available by Fall and includes a chapter giving an up-to-date summary of state labor legislation)